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WILL INTERNET DRIVEN CONCORD UNIVERSITY LAW SCHOOL REVOLUTIONIZE TRADITIONAL LAW SCHOOL TEACHING?

Robert E. Oliphant[†]

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I. INTRODUCTION

In the United States, there is probably not a more challenging institution in which to try and bring about fundamental change than a traditional law school. Despite repeated calls for change and reform, faculty and administrators appear comfortably entrenched in an environment that functions, in many ways, much as it did a century ago.

Recently, but with minimal success, scholars have called for "fundamental redesign of law school curricula and pedagogy."¹

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1. Jennifer Gerarda Brown, *"To Give Them Countenance": The Case For A Women's Law School*, 22 HARV. WOMEN'S L.J. 1, 9 (1999); see also Donald J. Weidner, *The Florida Supreme Court Commission On Professionalism And The Crises Of Legal Education*, FLA. B.J. 64 (May 1997) (crisis in legal education); Peter V. Letsou, *The Future Of Legal Education: Some Reflections On Law School Specialty Tracks*, 50 CASE W.

They have also challenged the American Bar Association's (ABA) control over an accreditation system that they contend, "allows law schools to graduate students who are by and large unprepared to practice law competently and ethically."² Most have concluded that despite the chorus of critics, significant change in legal education will not come from the voluntary efforts or the leadership of the law school faculties, administrators or the ABA.³

The stubborn grip traditional law schools and the ABA have maintained over legal education was somewhat loosened by the Justice Department's antitrust suit against the ABA.⁴ Implicitly, this government action reflects an official refusal to take on faith assurances from faculty and administrators that the status quo must be retained because "what is good for legal educators must necessarily be good for quality legal education."⁵

A major suggestion for reform was made in 1992 when the ABA's Section on Legal Education and Admissions to the Bar published the "Legal Education and Professional Development-An Education Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap." This document, which is referred to as the "MacCrate Report,"⁶ generated wide-spread

RES. L. REV. 457 (1999) (providing summary of reform efforts); Roger C. Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321, 333-34 (1982) (noting law schools are jealous of their prerogatives & comfortable with the way things are).

2. John S. Elson, *Why And How The Practicing Bar Must Rescue American Legal Education From The Misguided Priorities Of American Legal Academia*, 64 TENN. L. REV. 1135 (1997).

3. *Id.*

4. *United States v. ABA*, 934 F. Supp. 435 (D.D.C. 1996). The DOJ litigation resulted in a consent decree, entered into on June 25, 1996. The Justice Department determined that the accreditation process was used to inflate faculty salaries and ease faculty workloads, thereby escalating the costs of legal education. It questioned whether certain accreditation standards pertaining to sabbaticals, student-faculty ratios, facilities, resources etc., reflected greater attention to "guild concerns" than to educational quality. The decree enjoined the ABA from imposing base salaries, specific stipends, or fringe benefits onto the compensation paid to law school deans, associate deans, or other specified employees. *Id.*

5. Elson, *supra* note 2.

6. *The Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development: An Educational Continuum*, 1992 A.B.A. SEC. OF LEGAL & ADMISSIONS TO THE BAR 6 [hereinafter "MacCrate Report"]. The MacCrate Report identified ten fundamental lawyering skills and directed that law schools work with practitioners to ensure that lawyers acquire those fundamental skills before representing a client. The ten fundamental lawyering skills are: (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation

comment and raised serious questions about the difference in perspective between law professors and the practicing bar regarding a law school's role in American society. It asked two fundamental questions: First, what is the role of legal education in our society? Second, what is the role of the ABA in assuring quality legal education?

While the MacCrate Report and the Justice Department's Anti-trust lawsuit brought about some curricular change in traditional law schools, especially for skills and clinic faculty, most agree that the status quo was retained—law schools had dodged another reform bullet. The academy's reaction was not dissimilar to its historic response to other reform efforts.⁷

To many, the barriers to significant reform remained all but impenetrable. However, two unlikely events, both occurring outside the traditional law school environment, have generated renewed hope for change. The first is the explosion of computer technology, its wide-spread adaptation in the academic world outside law schools, and the challenge it has raised to traditional law schools to produce evidence justifying the efficacy of continued adherence to their present rigid teaching methods. The second is the emergence of a working model of an all Internet driven law school, Concord University of Law (Concord).

The impact of the technology revolution has caused some to predict that “[m]ost law schools, as we know them, will disappear, in recognizable form, somewhere in the next five to ten years”⁸ and that “[u]niversities won't survive” in the computer age.⁹ As the digital revolution swirls around legal education, these predictions are beginning to receive more than passing attention from members of the legal academy.

and ADR procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas. *Id.* at 138-40.

7. E.g., Roger Crampton, *Section of Legal Education and Admissions to the Bar, American Bar Association, Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools*, 1979 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR, (sometimes referred to as the Crampton report.); see also Judith Wegner, *Academic Programs: The Changing Course of Study: Sesquicentennial Reflections*, 73 N.C. L. REV. 725, 730 n. 24 (1995).

8. Larry C. Downes, *The Technology Merry Go Round: Strategic Choices and Challenges for Legal Education*, Remarks at the 1999 Annual Meeting of the Association of American Law Schools (Jan. 8, 1999).

9. Richard Warner et al., *Teaching Law with Computers*, 24 RUTGERS COMPUTER & TECH. L.J. 107, 109 (1998) (quoting Lenzner & Johnson, *Seeing Things as They Really Are*, FORBES, Mar. 10, 1997, at 122, 127).

The revolution has also begun to generate scholarship that is shared with the academy explaining a wide variety of technological educational experiments and projects.¹⁰ A handful of the 180 or more ABA approved law schools, such as Cornell Law School¹¹ and Chicago-Kent College of Law,¹² have become leaders in an effort to demonstrate how technological advances can be meaningfully integrated into traditional legal education. Annual law school technological meetings, such as those sponsored by the Center for Computer Assisted Legal Instruction (CALI), are increasingly drawing large numbers of faculty and staff.¹³

The working model of an all internet driven law school, Concord, was introduced in 1998 by Kaplan, Inc.¹⁴ Although neither Kaplan nor its officers suggested that Concord might trigger a national legal education reform movement, its existence and the constant flow of information it is providing about teaching and learning through the use of technology may be the catalyst to do just that. Unintentionally, and in fairly dramatic fashion, Concord has resurrected fundamental questions about law school pedagogy, teaching, learning and the almost exclusive control over the legal

10. E.g., Ronald Staudt, *In Search of the Origins of the Electronic Casebook*, 1 J.L. SCH. COMPUTING (1999), available at <http://www.cali.org/jlsc/staudt.html> (last visited Oct. 2000) (In 1995, Chicago-Kent created a first-year curriculum for 100 students using electronic casebooks.); John Mayer, *Alternate Futures: The Future of Legal Education*, 1 J.L. SCH. COMPUTING (1999), available at <http://www.cali.org/jlsc/mayer.html> (last visited Oct. 2000); James E. Duggan, *Mandating Computer Ownership At Law Schools: A Survey* (1999) available at <http://www.siu.edu/offices-lawlib/survey.htm>; Warner, *supra* note 9, at 107 and accompanying text; Michael A. Geist, *Where Can You Go Today?: The Computerization of Legal Education from Workbooks to the Web*, 11 HARV. J.L. & TECH. 141, 151 (1997); Ronald W. Staudt, *The Future of the Legal Profession: Does the Grandmother Come With It?: Teaching and Practicing Law in the 21st Century*, 44 CASE W. RES. L. REV. 499, 525 (1994); Western Governors University, at www.wgu.edu (offering degree programs from more than 45 universities and independent providers).

11. <http://www.law.cornell.edu/index.html> (last visited Oct. 2000).

12. <http://www.kentlaw.edu/> (last visited Oct. 2000).

13. In 1982, the University of Minnesota and Harvard Law Schools created the Center for Computer-Assisted Legal Instruction (CALI). Today, almost all U.S. law schools are members of CALI, and the organization distributes law school lessons on CD-ROM or on the Internet in a number of law school subjects. However, few law schools have ingrained them into the law school curriculum. The annual CALI conferences during the past decade have been a focal point for the interchange of ideas and innovation in legal education. In Europe, British and Irish law schools have created the British and Irish Legal Educational Technology Association (BILETA) to develop and distribute computer-assisted legal instruction materials. Geist, *supra* note 10, at 151.

14. <http://www.kaplancollege.com/schools/concord> (last visited Oct. 2000).

education enterprise exercised by the ABA.

Concord has laid down a serious challenge to traditional legal education. It boldly asserts that it can provide a good legal education over the Internet at a cost that almost every American can afford and deliver it at a time and place convenient to students, rather than one convenient to faculty and administrators. It says its hi-tech approach to teaching law enhances student learning by making faculty lectures repeatedly available at any time and place and by providing constant feedback in a fashion not found at traditional law schools.

This article examines Concord's hi-tech computerized operation and pedagogy.¹⁵ It compares Concord's teaching/learning approach to that used at many traditional law schools. The article suggests that several techniques employed by Concord are applicable to the traditional law school setting and, if adopted, will significantly enhance the learning in a traditional environment. The article also suggests that the American Bar Association should review its standards in light of the enormous technological changes that have occurred in the last decade and reconsider allowing Internet law schools like Concord to apply for accreditation under revised standards. Finally, the article asks without fully answering: "Will Concord revolutionize traditional law school teaching?"

II. CONCORD'S ORIGIN

Concord is a division of the Kaplan, Inc. organization and traces its origin to 1938, when Stanley H. Kaplan began tutoring students in his basement in Brooklyn, New York.¹⁶ Kaplan later learned about the SAT¹⁷ test from his students and added test preparation tutoring to his growing business.¹⁸ The business expanded outside New York when a tutorial center was added in Philadelphia in 1970. By 1975, Kaplan had at least seventy tutoring/testing outlets operating in the country.

Kaplan's company was acquired in 1985 by the Washington Post Company, which in 1998 claimed total assets of about \$2.1 bil-

15. The author was given complete access to the Concord program to assist in preparation of this article.

16. Margaret Littman, *Kaplan's NewTest*, at <http://www.universitybusiness.com/9909/kap.html> (last visited Oct. 2000).

17. Presently, there are a number of tutoring programs that Kaplan, Inc. offers. <http://www.kaptest.com>

18. Littman, *supra* note 16.

lion. Its holdings include the *Washington Post*, *Newsweek* magazine, the Gazette newspapers, a half dozen VHF television stations, and the Phoenix-based Cable One company.¹⁹

In the 1990s, Kaplan added book publishing, software, and on-line services and purchased companies specializing in recruitment, K-12 education, professional training, distance education, and test preparation.²⁰ Among its more recent acquisitions are: Perfect Access,²¹ the National Institute for Paralegal Arts and Sciences,²² the American Institute of Advanced Finance,²³ and the Dearborn Publishing Group.²⁴

In July 2000 Kaplan, Inc. acquired the Quest Education Corporation.²⁵ With this acquisition, Kaplan, Inc. became one of the largest companies in the world in the education business. Quest claims to serve 13,400 students in thirty schools in eleven states. It offers bachelor degrees, associate degrees and diplomas in the fields of health care, business and information technology.²⁶ For the year ending March 2000 Quest reported net revenues \$115 million. Kaplan is also the major shareholder in BrassRing, Inc., a business-to-business recruitment and hiring company that helps employers find and hire employees.²⁷

While Concord and the National Institute for Paralegal Arts and Sciences are its current distance learning projects, it is in the process of creating an on-line Internet driven university.²⁸ Kaplan Inc.'s revenues were estimated in 1998 at \$195 million—up sixty percent from 1997.²⁹

19. *Id.*

20. *Id.*

21. Perfect Access offers technology training, consulting, and support services to law firms, financial institutions, and corporations. <http://www.kaplanprofessional.com> (last visited Oct. 2000).

22. NIPAS offers accredited distance learning program offering diplomas, certificates, and degrees in paralegal studies and legal-nurse consulting. <http://www.kaplanprofessional.com> (last visited Oct. 2000).

23. AIAF offers preparatory courses for the Chartered Financial Analyst examination. Information available at www.kaplanprofessional.com (last visited Oct. 2000).

24. DPG offers specializes in publishing and training for securities, insurance, and real estate professionals. Information available at www.kaplanprofessional.com (last visited Oct. 2000).

25. Press release sent to author dated July 27, 2000, and authored by Guyon Knight, The Washington Post Company (202-334-6642).

26. *Id.*

27. <http://www.brassring.com> (last visited Oct. 2000).

28. Interview with Dean Jack Goetz (Mar. 13, 2000).

29. Litman, *supra* note 16.

Concord became operational in the fall of 1998 and located the headquarters for its Internet law school in California. At the time, California had more than 70 law schools operating in one form or another.³⁰ They ranged from institutions fully accredited by the American Bar Association to correspondence and offshore schools.³¹ While graduates of all California schools must pass the state bar examination if they intend to practice in that state, students at non-accredited schools like Concord must pass a special examination at the end of their first year before they are permitted to continue their studies.³²

III. THE ACADEMY'S RESPONSE

Given the legal academy's disinterest in technology, the turtle-like introduction of technology into most ABA law schools, and a history of clinging to the status quo, it was not surprising that Concord's emergence startled many and triggered a fairly immediate adverse reaction from others. For example, Supreme Court Justice Ruth Bader Ginsburg took the occasion of a dedication speech of the Rutgers Center for Law and Justice in September 1999 to single out Concord for criticism. Associate Justice Ginsburg, a former law professor at Rutgers and Columbia Universities before going on the bench,³³ said:

30. Howard Mintz, *Law School On-line: Establishment Skeptical About Digital Degrees; Advocates Site Independent-study Tradition of Abe Lincoln*, SAN JOSE MERCURY NEWS, Nov. 15, 1999, available at <http://www.mercurycenter.com/archives/reprints/199/hmintz11151999.htm> (last modified Nov. 30, 1999) (last visited Oct. 2000).

31. In 1999, California had nineteen ABA-accredited schools and 20 California-accredited schools. There were also seventeen non-accredited schools and twelve correspondence schools and three foreign law schools. Concord is the only all on-line law school in California. *Id.*; see also State Bar of California, *Law Schools in California*, available at <http://www.calbar.org/shared/2admsch.htm> (last visited Aug. 30, 2000).

32. Mintz, *supra* note 30 and accompanying text. California law students attending unaccredited schools who wish to go on to take the state bar exam are required to take an examination after their first year of study. The bar exam and this first-year exam are the only two occasions when a student must be physically present in California. A student who passes the first-year exam and completes Concord's four-year program, is eligible to sit for the California bar exam. California is currently the only state that will allow Concord graduates to sit for the bar, although members of the California bar are admitted to the bar in some other states and by the federal government, meaning successful graduates may be able to practice law in certain areas outside California.

33. Associate Justice Ruth Bader Ginsburg attended Cornell University and the law schools at Harvard and Columbia Universities. She taught at Rutgers Uni-

...I am uneasy about classes in which students learn entirely from home, in front of a computer screen, with no face-to-face interaction with other students or instructors. So much of legal education—and legal practice—is a shared enterprise, a *genuinely* interactive endeavor. The process inevitably loses something vital when students learn in isolation, even if they can engage in *virtual* interaction with peers and teachers. I am troubled by ventures like Concord, where a student can get a J.D. (though the school is still unaccredited) without ever laying eyes on a fellow student or professor. We should strive to ensure that the Internet remains a device for bringing people together and does not become a force for isolation.³⁴

Concord's Dean, Jack R. Goetz, responded to Associate Justice Ginsburg, saying that Concord provided more interaction between students and faculty members than that afforded at a traditional school.³⁵ He added that:

The reality is that many law schools still have first-year classes of 70 or 80 people in which a student has very little interaction with the professor. Concord students can communicate with their professors via e-mail or telephone, and get to know their classmates through on-line discussions....Cost is another factor. Concord costs \$4,200 a year—about a third of what most traditional law programs charge.³⁶

One of the nation's most prestigious law schools, Harvard, also adversely reacted to Concord by promulgating a rule that essentially prevents the use of its talented faculty in future on-line legal education models outside its own institution. Harvard's response was prompted by the decision of one of its best known scholars, Professor Arthur Miller, to lend his name and prestige to the Con-

versity School of Law from 1963 to 1972 and at Columbia Law School from 1972 to 1980. She was appointed to the U.S. Court of Appeals for the District of Columbia Circuit in 1980 and the United States Supreme Court in 1993. <http://supct.law.cornell.edu/supct/justices/ginsburg.bio.html> (last visited Oct. 2000).

34. The Honorable Ruth Bader Ginsburg, Remarks for Dedication of Rutgers Center for Law and Justice (September 9, 1999) *available at* <http://rutgersnewark.rutgers.edu/occ/speech.htm> (last visited Oct. 2000); *see also* Katherine S. Mangan, *Justice Ginsburg Raises Questions About Internet-Only Law School*, CHRON. HIGHER EDUC., *available at* <http://chronicle.merit.edu/free/99/09/99091302t.htm> (Sept. 13, 1999) (last visited Oct. 2000).

35. Mangan, *supra* note 34 and accompanying text.

36. *Id.*

cord effort.³⁷ This occurred when Professor Miller was retained to produce a series of videotaped civil procedure lectures to be delivered via streaming video from Concord's web site. In addition to completing the lectures, he also publicly endorsed Concord's legal education program and his endorsement appeared on Concord's web site. Professor Miller wrote in part:

One of my latest endeavors involves Concord University School of Law. Concord represents this focus on providing legal education to those who thought a law degree out of reach. The school is at the forefront of educational technology because of its use of the Internet to conduct its law classes. I am proud to be associated with Concord because of its bold attempt to do what no one has done before. The people at Concord include a number of legal educators I have had the pleasure of working with at various stages of my career. The university is backed by the Kaplan organization and The Washington Post Company, for whom I have the utmost respect.

Students at Concord will be able to access instructional material for which I have been an advisor. The material has been put together for the Internet, but embodies my approaches to the teaching of legal principles in my classes over the years. I know you will find the material to have excellent coverage and to be easy to digest. The opportunity to make this material available for students who otherwise may not have had an opportunity to attend law school has and will continue to be a source of great pleasure for me.³⁸

Harvard's administration was no doubt enraged and its faculty shocked when they discovered Miller's association and endorsement of Concord. To discourage future similar relationships, in August 1999 a modified faculty manual was issued that bars Harvard faculty from acting as a teacher, researcher, or salaried con-

37. Professor Miller is the Bruce Bromley Professor of Law at Harvard University. He moderated the first On-line Internet Course Open to the Public sponsored by the Harvard Berkman Center in February, 1998. <http://www.law.harvard.edu/news/millercybercourse.html> (Feb. 6, 1998). The Berkman Center for Internet & Society is a research program founded to explore cyberspace, share in its study, and help pioneer its development. It represents a network of teaching and research faculty from Harvard Law School and elsewhere, as well as students, fellows, entrepreneurs, lawyers, and virtual architects working to identify and engage the challenges and opportunities of cyberspace. <http://cyber.law.harvard.edu/> (last visited Oct. 2000).

38. <http://www.concord.kaplan.edu/faculty.htm> (last visited Oct. 2000).

sultant to an Internet on-line school absent special permission.³⁹ Special permission is obtained by first getting consent from the Dean and then receiving an affirmative vote from the corporation that governs Harvard University. Failure to abide by this new rule will result in severe penalties.⁴⁰

The reactions by Associate Justice Ginsburg and Harvard Law School reflect the enormous impact Concord is having on established institutions and the threat it seems to present to the status quo. It is probably not too far from the mark to suggest that these negative responses to Concord are supported a majority of the present legal academy. However, the debate over the use of technology in teaching and learning in the law school environment is far from at an end.

Some universities, such as Cornell, are aggressively moving into distance education. In March 2000, the Board of Trustees approved a recommendation to create e-Cornell, a legally separate, but Cornell-controlled, for-profit company. This entity will be used to create and market distance-learning programs.⁴¹ "Distance learning will be a fundamental part of higher education in the 21st century, and this resolution enables Cornell to take a leadership role in the process," said President Hunter Rawlings when e-Cornell was announced.⁴² "The benefits of e-Cornell will accrue to Cornell students on campus and to prospective students, alumni and others who will be able to access the wealth of Cornell's educational resources through distance-learning programs."⁴³ With Cornell's already strong national leadership role in the academic use of the Internet,⁴⁴ might it become the first American University with both a traditional and Internet driven law school?

As technology improves and more colleges, universities and private entrepreneurs experiment with on-line law school learning, the possibility that the Berlin-Wall-like opposition from law school

39. Amy Dockser Marcus, *Seeing Crimson: Why Harvard Law Wants to Rein In One Of Its Star Professors*, WALL ST. J., Nov. 22, 1999, at A1.

40. *Id.* No similar barrier exists to faculty who are interviewed by television networks or associate with law firms as consultants, or participate in trials while members of the faculty.

41. Jacquie Powers, *Cornell Board of Trustees Approves Resolution to Create e-Cornell*, available at http://www.news.cornell.edu/Chronicles/3.16.00/e-Cornell_trustees.html (Mar. 16, 2000).

42. *Id.*

43. *Id.*

44. Former Dean Peter Martin is a nationally recognized leader and innovator in the use of technology in the legal education setting.

faculty and administrators will eventually crumble. With changes in the ABA's rules and regulations, real competition may eventually enter the arena. Should this happen, the winners will be the American public.

IV. FACULTY MANAGEMENT

Concord has a three-tiered faculty management system that it labels: (1) Visiting and Supplementary Lecturers, (2) Teaching Professors, and (3) Instructors. The Visiting and Supplementary Lecturers have helped design its curriculum and are usually found delivering the videotaped lectures over the Internet. They include Professor Miller, Professor Lawrence Levine (McGeorge), John Moye (formerly of the University of Denver), Professor Mary M. Cheh (George Washington University National Law Center, where she is the Elyce Zenoff Research Professor of Law), Professor Rafael Guzman, Professor Marci Kelly (associate dean and professor at Golden Gate University School of Law), Professor Ellen Peck Esq., and Professor John Blum (Associate Dean for Health Law Programs at Loyola University Chicago School of Law).⁴⁵

The second tier consists of the "teaching faculty," or professors who are not as well recognized nationally as the Visiting and Supplementary Lecturers. These professors are responsible for teaching courses and managing any instructors who may be assisting them.⁴⁶ The third tier are instructors who are part-time lawyers and former professors located anywhere access to the Internet is available.

Concord uses its teaching faculty as managers of instructors in certain courses such as legal writing. For example, when an instructor corrects a legal writing essay and assigns a grade, it must be reviewed by the teaching faculty member before it is forwarded to the student. The teaching faculty member may agree, disagree and change the grade, add comments, or return the essay to the instructor for further analysis and comment. Concord believes that this system provides a measure of quality control that is not found in most traditional law schools. It also helps Concord train instruc-

45. *Id.*

46. Teaching faculty include: Dean Jack R. Goetz, Professors Greg Brandes, Robert A. Hull, Martha Siegel, Steven Bracci, William L. Chambers, Reva G. Goetz, Craig Gold, Douglas Holden, Mark A. Kaufman, John Moye, Candace Elliott Person, Stacey Sharp. <http://www.concord.kaplan.edu/concordfaculty2.htm>. (last visited Oct. 2000).

tors to become future on-line faculty.

V. STUDENT HOME PAGE

Concord has applied computer technology in a variety of ways to manage and communicate with its student body. One of its communication tools is the Student Home Page. Once a student is enrolled, access to Concord's law school teaching program is gained over the Web using a secure ID and password. After logging on to Concord over the Internet, the Web opens to a Home Page that has been customized for the individual student. Although traditional law schools are beginning to utilize similar classroom management software programs created by Blackboard, WestGroup's TWEN, WebCt, and the Lexis-Nexis Web Course in a Box, the individualization of Concord's Home Page sets it apart from other efforts.

The student Home Page provides news, announcements from professors and the Administration, faculty office hours, discussion assignments and a list of the courses for which the student is enrolled. The most advanced feature is the graphical information and data showing each student's progress in a course. This information is gathered by the computer by recording student activities including the time spent reviewing lectures, attending asynchronous and synchronous chat room discussions, the number of exams taken and the results. The computer tracks and charts this activity and compares it with a pre-programmed "ideal" student progress module. Based on this analysis, it generates data that graphically informs the student of where he or she is in the course and if not on track, what to do to catch up.

Dean Jack Goetz says that Concord's computer tracking system is so effective that it can generate a warning notice, which is sent to the Dean of Students, where a student appears to be in serious academic difficulty.⁴⁷ Dean Goetz has characterized the program as "the worst of Big Brother being put to the best of uses."⁴⁸

VI. A MODULAR APPROACH TO COURSE INSTRUCTION

Concord uses the modular approach to course instruction. For example, first year course content is separated into 30 study mod-

47. Dean Jack Goetz, Address at the 10th Annual CALI Conference, Chicago-Kent Law School, Chicago, Illinois (June 21, 2000).

48. *Id.*

ules with each module covering a week and a half of study, which Concord believes is a manageable student load.⁴⁹ Students read assigned caselaw as they would in a traditional law school setting, submit writing assignments to the Concord faculty using e-mail, and take multiple choice quizzes on-line. They receive instantaneous feedback when taking the computer quizzes because the computer grades the responses and then points to areas in the reading assignments it believes a student should review. Essays written by students are returned to them by faculty using e-mail and usually contain extensive comments.

To a certain extent, Concord's modular teaching system emulates the path a first-year student follows in a traditional law school setting and retains the perceived educational value of simultaneously studying a series of traditional courses. Each of the study modules contains a series of assignments that are intended to cover a particular legal principle or concept.⁵⁰ The computer program prods a student through a substantive course by making the assignments and administering computer directed quizzes. As a check on comprehension and also as a restraint on moving out of sequence, a student must first pass a computer administered examination covering that module before the computer will open the next. Because the computer is programmed so that first-year courses must be taken in a specific sequence similar to that found in most traditional law schools, a student cannot complete torts while ignoring contracts or other first-year courses.⁵¹

The Concord model paces a student through the study of law and, as noted earlier, recognizes the efficacy of a student studying several first-year courses simultaneously. It provides almost constant feedback through the use of on-line quizzes and written essays graded by its faculty. At any time during the semester, it provides students, faculty and the administration with detailed information on a student's progress. The computer testing plus completion of about 18 essays in the first year allows Concord to deliver more feedback to its student's than is received by students in most traditional law schools.⁵²

49. A module covers 11.3 consecutive days.

50. <http://www.concord.kaplan.edu/curriculumcoursesyllabus.htm> (last visited Oct. 2000).

51. Concord faculty say that one of the advantages of the computer program is that they are able to determine at any time during the semester the progress each student in a course is making.

52. Goetz, *supra* note 28.

VII. FLEXIBILITY AND RESTRAINTS

While Concord students enjoy the flexibility of studying law at their own pace over the Internet, there are certain constraints. One of them is the requirement established by the Committee of Bar Examiners of the State Bar of California, that each year's study be completed in a span of forty-eight to fifty-two consecutive weeks.⁵³ As noted earlier, as an aid to its students Concord's computer tracks their progress and continually provides data showing whether they are ahead or behind the 51 week study requirement.

The other restraint on flexibility is that students intending to practice law must complete the preliminary California bar examination at the end of the first year, which is officially called "First Year Law Students Exam."⁵⁴ To do this, Concord students must travel to California and spend a few days there preparing for and taking the bar.

VIII. SYNCHRONOUS CHAT ROOMS

Traditionalists argue that a major disadvantage of studying law at Concord is the absence of face-to-face interaction with other students or instructors.⁵⁵ In response to this concern, Concord uses a variety of means to communicate with its student body, including e-mail, telephone, asynchronous threaded discussions, and asynchronous discussion boards. While all of these communication devices are in use at some traditional law schools in one form or another, Concord's use of synchronous chat rooms is unique in the law school world.

The synchronous chat rooms convene on a weekly basis. The discussions are lead by a Concord professor and students may continue them asynchronously following class using Concord's Discussion Boards. There are about forty students in a class.⁵⁶

53. *Id.* The Rules Regulating Admission to Practice Law in California, published by the Committee of Bar Examiners of the State Bar of California, in Rule VII, Section 4(b) state: "To receive credit for one year study by instruction in law from a correspondence law school, an applicant must have received passing grades in courses requiring not less than 864 hours of preparation and study during a period of not less than 48 weeks nor more than 52 consecutive weeks."

54. It should be noted that the California legislature, at the time the article was written, had passed legislation abolishing the so called "Baby Bar." However, it was anticipated that the governor would veto the bill and there would not sufficient votes to overcome the veto.

55. Ginsburg, *supra* note 34 and accompanying text.

56. Goetz, *supra* note 28 and accompanying text. As Concord gains more ex-

To enhance the potential for effective academic use of its synchronous chat rooms, Concord does three things: First, it requires its students to install a sound/video card on their computers so they can receive streaming video and audio. Second, it requires them to download a free version of a software program called *Real-Audio* and install it on their computer.⁵⁷ Third, it obtained chat room software that is more sophisticated than that in use in most traditional programs that gives its faculty complete control of the chat room.

The synchronous chat room permits a member of the faculty to synchronously meet with students anywhere the faculty member can gain access to a computer with a sound card. During the session, the faculty member poses questions to student participants by speaking into a tiny microphone attached to the computer. Students type responses using their computer keyboards. A small management monitor appears on the faculty member's computer screen and flashes each student's response to the professor, who is the only person seeing it. If the response is one that the professor believes will enhance the discussion, it is posted. If the response indicates that the student needs additional assistance, the professor can communicate individually by sending a note unseen by others to the sender.

There are significant advantages to the management window provided by Concord's software. It allows the teacher to direct chat room discussion by eliminating confusing or distracting student comments. A teacher can also control the pace of the discussion, which helps maintain interest.

Faculty not using software similar to Concord's may encounter difficulty effectively operating a chat room.⁵⁸ Law students, who have had previous encounters outside academia with chat rooms, may view them as providing opportunities to have fun at the expense of the educational effort. Occasionally, a struggle for control

perience using this tool, one of the questions to ask is the appropriate number of students for the most effective chat room experience. It may be that 40 students is too many for the most effective chat room experience.

57. Real Audio also sells an upgraded product for those desiring to pay the extra money for it but who prefer the best in sound and video. Concord's technicians help students with problems installing and operating this equipment. <http://www.realaudio.com>

58. The following observations are based on two years experimentation with software that does not possess the advantages provided by that used at Concord University.

of the chat room may erupt between the professor and one or two chat room- savvy students, which, without the Concord management window, may completely derail the academic effort. Concord's computer program leaves complete control of the cyberspace chat room in the hands of the professional educator, the professor.

Another advantage of Concord's synchronous chat room model over that in use at most law schools in the nation is the elimination of the need for faculty using it to possess excellent typing skills. When traditional chat room software is used, a professor with poor typing skills may find it impossible to control experienced chat room students possessing superb typing skills whose goal is to make the chat room an adult playground. Some faculty may also find it difficult, if not impossible, to respond spontaneously to student questions while using a computer keyboard. Finally, faculty may be self conscious and fearful of making a mistake such as forgetting to put a question mark after posing a question, or of using the word "course" for "coarse." Concord's software program eliminates these problems.

The asynchronous chat room also has advantages for students. In traditional classroom settings, there is a professor at the front of the room, students in assigned seats, with the instructor completely in control over who among the students will be called upon to recite. Interaction is quite formal. However, when a group of students led by a professor are working together on a problem in a chat room, the students can circulate freely and will no doubt talk more openly and spontaneously. Moreover, chat rooms are democratic and gender neutral.⁵⁹

In the hands of a creative teacher, the synchronous chat room can be used for limited social purposes, such as student and teacher greeting each other at the beginning of a class and sharing personal information such as engagements, births, awards and deaths.

Another advantage of the synchronous chat room is the opportunity it provides the teacher to bring to the classroom experts from around the world. The experts can communicate and share information with the students without imposing on the educational institution the normal costs associated with the expert's travel and

59. They may disadvantage a student with poor typing skills and students who are blind, although technology can meet most of the problems associated with disabilities.

related matters. While Concord has apparently not begun to take significant advantage of this mode of teaching/learning, it and other law schools are certain to do so in the future.

Concord's synchronous chat rooms and asynchronous discussion boards enhance the potential for effective academic instruction over the Internet. While the use of these tools may not satisfy all of Concord's critics, they should go a long way in quelling some of their concerns.

IX. CONCORD'S TESTING PHILOSOPHY

The question of the most effective and reliable means for evaluating law students during the course of their legal education is one that seems to raise more questions than answers. Traditional law schools have been sharply criticized for their approach to testing and the related issue of an absence of faculty feedback to students during their course of study.⁶⁰

Critics point out that law professors traditionally provide student feedback almost exclusively through the use of long final essay examinations. These examinations are given at the conclusion of a semester, or in some cases, at the end of two semesters. Until that point, a student has little or no information about the progress being made in a course.

Critics also contend that the traditional essay examination is one of the more undesirable forms of professional evaluation and suggest it may actually act as a barrier to "deep learning."⁶¹ They say that the single essay exam may highlight "inaccuracies in the evaluation that are the result of student illness, personal troubles, or imbalances between student coverage and selective testing."⁶² They assert that the traditional essay exam is seldom used as a diagnostic tools or instructional device,⁶³ and is not standardized or subjected to reliability or validity testing.⁶⁴

Despite this criticism, the single essay exam remains the primary evaluative device in most law school doctrinal courses. The

60. *E.g.*, Barbara A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 658 (1991).

61. *Id.*

62. Paul T. Wangerin, "Alternative" Grading in Large Section Law School Classes, 6 U. FLA. J.L. & PUB. POL'Y 53, 75 (1993).

63. Deborah Waire Post, *Power and the Morality of Grading-a Case Study and a Few Critical Thoughts on Grade Normalization*, 65 UMKC L. REV. 777, 784 (1997).

64. *Id.* at 787; *see also* Glesner, *supra* note 60, at n. 4 (listing literature on teaching and testing.)

explanations for this are many and varied. Obviously, law faculties have found the single substantive essay evaluative system comfortable. Once outside a classroom, faculty can spend most of their efforts engaged in consulting, researching, and writing. If they spent the time to regularly provide students with evaluative feedback, especially in a typical class of 80-120 students, their outside activities would be significantly hindered.⁶⁵ Furthermore, regularly developing quizzes, administering and grading them throughout the semester would end most outside the law school activity.

Administrators, like faculty, appear comfortable with the present system. For one thing, with one professor teaching a hundred or more students an hour in a single classroom, there is little worry about a positive cash flow. For another, to create a feedback system similar to Concord's would require significant financial investment in technology and faculty development and the faculty have apparently not made a persuasive case to the administrators that such an investment is wise.

Students may also be comfortable with the traditional system because they can cram for a single essay examination while "enjoying" or working at a job outside the law school during most of the semester. For many students, especially after their first year, the goal is not how high to finish in class rank but merely to complete their legal education so the bar examination can be taken.

In some respects, Concord's use of testing through the use of final exams, quizzes and essays is similar to the model used at traditional law schools, however, there are significant departures from the traditional regime. For example, Concord relies heavily on its computer testing program to provide students with effective feedback on their comprehension in a substantive course. It sees testing and feedback as an integral part of the learning process, therefore, it has programmed its computers to provide a constant stream of feedback to its students.

The exam process is mandatory and students must achieve a score of 70 or better in order to receive credit. A student who fails to achieve a 70 must take a "back quiz" before the computer allows further progression in the course. The computer tracks each student's efforts and generates reports for Concord's Dean of Students if it appears a student is experiencing difficulty. The com-

65. The large classes also make it virtually impossible for a professor to give a series of exams, even relatively short ones, correct and return them to the students with any degree of promptness.

puter also generates reports so that at any time during the semester a member of the faculty can determine how well students are doing during in a particular course.

Traditionalists will no doubt criticize Concord because many of its exams are intentionally written to mirror the content and language of the California bar examination. However, Concord believes this is necessary because of the requirement that students in unaccredited ABA schools wishing to practice law must pass a state administered bar examination following their first year.

As noted earlier, Concord's computer controls the pace of student study by refusing to allow unlimited progress in one course to the detriment of another. In other words, a student must make consistent, satisfactory progress in all of the first-year courses. Should a student attempt to complete a course out of sequence, the computer will reject a request for testing in that subject until the student has completed the coursework in the others.

At the end of the first year, students are given a timed, six-hour final examination. Half of the examination consists of multiple-choice questions while the remainder is made up of three one-hour essay questions. The examination covers contracts, torts and criminal law. The final examination is administered at a fixed date and time set by the Concord Administration. When ready for the final examination, a student logs on to the Concord web site and the final examination is downloaded to the student's computer. At the end of each three hour session, the student returns the examinations to Concord over the Internet. Because the examinations are timed, a student not meeting the time requirements will be penalized. The teaching faculty grade the essay examinations and the computer grades the multiple choice examinations. The results of the final examinations are compiled and sent to the student.

The question of student cheating has been raised with Concord by a few academics. Concord's says that it has not perceived any student cheating on its final examinations. It also says that all of its assessment exams are administered under Concord's Student Honor Code, which it takes seriously.⁶⁶ However, it is prepared, if

66. Concord University School of Law requires students to conduct themselves in accordance with the professional standards and conduct expectant of future attorneys. Students failing to meet these standards, or who are disruptive to the school, may be subject to disciplinary action, including dismissal. To maintain the academic integrity of its juris program, Concord University has installed pro-

necessary, to create relationships in a student's local, including hiring monitors, should cheating become an issue. With advances in technology, this issue will no doubt be eliminated through the use of retina screening, thumb printing or a similar identification process.⁶⁷

X. STREAMING VIDEO LECTURES

One of the challenges faced by Concord was how to deliver law school classroom lectures to its students. It was aware that in doctrinal courses the traditional approach to classroom teaching in law schools for almost 130 years has been the "Socratic method."⁶⁸ It may not have been aware, however, of the nature and extent of the criticism within the legal academy over the use of this method.⁶⁹ Proponents contend that the Socratic method of teaching bears a

tections into its website to prevent students from using the curriculum inappropriately or submitting assignments or examinations fraudulently. Any student that has been found to be involved in the false submission of assignments or material on the Website or otherwise in furtherance of their degree will be subject to discipline, including possible expulsion from the school. In addition, any information of unethical or fraudulent use of the site by a student that is confirmed after thorough investigation by Concord University will be forwarded to the Committee of Bar Examiners of the State Bar of California and may affect the student's future application for admission to the bar. <http://www.concord.kaplan.edu/school-policies.htm> (last visited Oct. 2000).

67. For example, a new technology that identifies people using the eye is being developed for use with automated teller machines. The technology is called iris identification, developed by Sensar Inc., a Moorestown, N.J., spinoff from the David Sarnoff Research Centre, an advanced technology research institute. See Joanna Powell, *Eye-Dentification-Mission Impossible Depicts Hollywood-Style High Security-The Eye Scan. It's coming to a teller machine near you*, http://www.infosec.com/access/access_100197a.html-ssi (last visited Oct. 2000).

68. Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation": *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 965 (1999) ("legal education, as an institution, is not receptive to the use of collaborative or cooperative learning teaching pedagogies"); Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, 1998 BYU EDUC. & L.J. 1, 5 (1998) ("Socratic Method remains the primary method of law teaching."); Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943 (1995-1996) (historical overview of legal education).

69. E.g., Jennifer Gerarda Brown, "To Give Them Countenance": *The Case for a Women's Law School*, 22 HARV. WOMEN'S L.J. 1 (1999) (stating "[t]he evidence suggests that men and women experience law school differently, and this difference has a negative impact on many women" and citing Deborah Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547 (1993)); American Bar Association Commission On Women In The Profession, *Elusive Equality: The Experiences Of Women In Legal Education* (1996) (testimony indicating women in legal education are subjected to various forms of hostility and discrimination).

special relationship to the development of law student reasoning and believe that it is a fundamental requirement for lawyers.⁷⁰ They also claim that it is an efficient teaching device, even in large classrooms, because it stimulates broad-based active student involvement in the dialogue.⁷¹

Critics of the Socratic method assert that it sometimes fails to impart important moral values, or that it occasionally imparts the wrong moral values,⁷² and that it does not function adequately, even for teaching doctrine alone. Critics allege that the method can alienate students and undermine their learning potential.⁷³ Typical of the criticism from some scholars is the following:

[A] substantial proportion of law students—many, but by no means all of them, women students—experience frustration, or alienation, or both, because of law schools' failure to engage and develop the full range of intellectual capacities necessary to successful and responsible practice.⁷⁴

Students described faculty teaching methods as overly hierarchical and autocratic, creating unnecessary performance pressures, and fostering competitiveness among students. Many remained silent in Socratic classrooms because in that context they felt that "speaking feels like performance." They perceived that the professor often used the Socratic method "to intimidate or to establish a hierarchy within large classes."⁷⁵

In response to these observations, teaching at some law schools has been altered by the use of problem-oriented teaching, addi-

70. Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981); Paul D. Carrington, *Hail! Langdell*, 20 LAW & SOC. INQUIRY 691 (1995).

71. The stereotypic picture of a Socratic exercise is the professor questioning a handful of law students at length, about a particular facet of a case in the reading assignment. Learning occurs through an ongoing stream of questions that challenge assumptions and eventually reveal to the students the underlying legal principle involved.

72. E.g., Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991) (discussing the failures of the current system); Philip C. Kissam, *The Decline of Law School Professionalism*, 134 U. PA. L. REV. 251, 258-59 (1986).

73. E.g., Laura Kalman, *To Hell With Langdell!* 20 LAW & SOC. INQUIRY 771 (1995); Thomas L. Shaffer, *Moral Implications and Effects of Legal Education, or: Brother Justinian Goes to Law School*, 34 J. LEGAL EDUC. 190 (1984); see also David Bryden, *What Do Law Students Learn? A Pilot Study*, 34 J. LEGAL EDUC. 479 (1984).

74. Sarah Berger et al., *Hey! There's Ladies Here!* 73 N.Y.U. L. REV. 1022, 1025 (1998).

75. *Id.* at 1035-36.

tional seminars, new clinics, enhanced skills courses and improved legal writing programs. Despite these changes, the reality is that the traditional Socratic method remains dominant in most doctrinal law school teaching.

While Concord could not perfectly emulate a traditional classroom, it approached student learning with the goal of doing as much as possible to retain certain portions of the traditional law school learning environment. For example, in its core courses, Concord requires that students use traditional law school casebooks. Consequently, Concord students and those at fully accredited ABA law schools read and study essentially the same materials. In general, these materials are an effort to "strike a balance between exploration of underlying philosophical problems and analysis of day-to-day matters that arise frequently in office practice or in the courts."⁷⁶

As already noted, Concord hired some of the nation's most experienced, legal educator-lecturer-scholars to produce its taped law school student lectures, which are delivered via streaming video over the Internet. An advantage of Concord's use of this technology is that the lectures are available for student review at any time. In addition, they can be reviewed as often as the law student desires. Illness, snowstorms, or a sudden emergency does not prevent a Concord student from hearing and seeing the substantive lecture delivered by the professor.

Traditional law schools have not shown any significant interest in developing this classroom model of legal education. Possibly, traditional schools lack a sufficient stable of talent so that a good product could be produced. Or, possibly talented faculty are not convinced of the educational value of this kind of lecture delivery. Or, possibly law school administrators are unwilling to supply the resources to fund production and placement of similar lectures on the Internet. For whatever the reason and despite its advantages in many settings, the Concord classroom model is not one found in the traditional law school world.

XI. LAW LIBRARY

Like a lightening bolt from a summer thunderstorm, the information technology revolution has struck law school law libraries and the full force of its impact has yet to be felt. Technology

76. COUND, ET AL., *CIVIL PROCEDURE, CASES AND MATERIALS* (6th ed. 1993).

threatens the existing ABA library accreditation standards⁷⁷ and raises fundamental issues about law student legal research training and ultimately, the continued existence of law libraries in their present form.

With the Internet providing a vast wealth of information for legal research, and sophisticated search engines developing almost daily to uncover that information, law students can conduct legal research faster and probably more accurately than ever before by using the Internet. Moreover, they can conduct the research from any location where they have access to the Internet. The impact of technology is so pervasive that law libraries are generating useful indexes to help students find the hundreds law related sites on the Web.⁷⁸

Simple Internet searches for state materials in a jurisdiction like Minnesota will almost instantly produce a wealth of material, only a portion of which is discussed here. For example, the Minnesota state law library web site contains links to Minnesota statutes, appellate court decisions, regulatory agency rulings, and other information.⁷⁹ Local city ordinances, city charters and other matters relating to county and municipal governmental operations can be found with ease.⁸⁰ Minnesota's three law school law libraries, William Mitchell, the University of Minnesota, and Hamline, all have developed robust web directories to help students locate information on the Internet.⁸¹ Administrative information,⁸² bar association materials including commonly used forms,⁸³ and an array of legal information is freely available at the click of a mouse.

77. *Office of the Consultant to the American Bar Association, Standards for Approval of Law Schools and Interpretations* at 47-51 (1995); *Standards* 601-06, 704 (specifying various factors for measuring the adequacy of law libraries).

78. *E.g.*, the William Mitchell College of Law library site maintained by Anna Cherry, Esq. at <http://www.wmitchell.edu/library/inetres.html>. (last visited Oct. 2000).

79. <http://www.state.mn.us/courts/library/mnlr.html> (last visited Oct. 2000).

80. <http://www.lawsources.com/also/usa.cgi?mn>. (last visited Oct. 2000).

81. *E.g.*, William Mitchell College of Law Library, at <http://www.wmitchell.edu/library/index.html> (last visited Oct. 2000); University of Minnesota Law Library, at <http://www.law.umn.edu/library/tools/EResources/internet.html> (last visited Oct. 2000), Hamline University Law Library, at <http://web.hamline.edu/law/library/legalresearch.htm> (last visited Oct. 2000).

82. *E.g.*, Minnesota Department of Health, at <http://www.health.state.mn.us/> (last visited Oct. 2000).

83. *E.g.*, <http://www.washlaw.edu/legalforms/legalforms.html> (last visited October 2000); <http://www.mcn.net/~kerrlaw/> (last visited Oct. 2000).

Seeking federal material on the Internet is also a fast and simple process. One can instantly find the complete opinions in a variety of ways from the United States Supreme Court and the various federal Courts of Appeal.⁸⁴ Other federal materials such as the Code of Federal Regulations,⁸⁵ the U.S. Tax Code,⁸⁶ and federal statutes are likewise available on the Internet.⁸⁷ Agency information is abundant. For example, the United States Securities and Exchange Commission site⁸⁸ allows the user to access information about the agency and contains links to current news and small business information. The State Department has a site that provides information about various countries along with subject matter categories for those traveling and doing business abroad.⁸⁹ The federal materials on the Internet meet or exceed most of that found in existing law libraries.

Useful collateral information is also available in abundance on the Web including art values,⁹⁰ collectible information,⁹¹ and even the cost of used cars.⁹² Searching for background information on attorneys on the World Wide Web is easy because of the Martindale-Hubbell site⁹³ where one can search for an attorney or firm name, location, or type of practice.

Increasingly, lawyers are using the Internet as their virtual law offices. John C. Tredennick Jr., former editor of *Law Practice Management* magazine, recently wrote, "It will all be e-practice soon."⁹⁴ One example is Netwills, LLC⁹⁵ which intends to "shepherd" the cyber client through the process of estate planning, beginning with education through information gathering and ending with the production of customized legal documents—all on-line. Docu-

84. *E.g.*, Official Site of the 8th Circuit Court of Appeals, <http://www.ca8.uscourts.gov/index.html>; (last visited Oct. 2000). LLRX.com, <http://www.llrx.com>. LLRX is a site designed for law librarians and legal researchers and contains over 600 links to court rules on the World Wide Web. (last visited Oct. 2000).

85. <http://www.access.gpo.gov/nara/cfr/index.html> (last visited Oct. 2000).

86. <http://www.fourmilab.ch/ustax/> (last visited Oct. 2000).

87. *See generally* Legal Information Institute, U.S. Code, <http://www4.law.cornell.edu/uscode/> (last visited Oct. 2000).

88. <http://www.sec.gov/> (last visited Oct. 2000).

89. http://travel.state.gov/judicial_assistance.html. (last visited Oct. 2000).

90. www.artbrokerage.com. (last visited Oct. 2000).

91. www.replaytoys.com (last visited Oct. 2000).

92. Kelly Blue Book, www.kbb.com (last visited Oct. 2000).

93. <http://lawyers.martindale.com/marhub> (last visited Oct. 2000).

94. Daniel E. Harmon, *www.Site-Seeing Web Sites of Interest to Legal Professionals*, 17 NO. 14 LAW. PC 13 (2000).

95. <http://www.netwills.com> (last visited Oct. 2000).

ments will include wills, living wills, living trusts, probate, community property agreements, disability planning and estate taxes.⁹⁶

Despite the technological revolution and the availability of huge legal databases on the Internet, there is no present basis upon which Concord can satisfy the ABA law library standards because it fails to possess a building containing thousands of hard bound books that duplicates most of the information found on the Internet. Concord's response is that its graduates will be practicing in a digital age and great importance is attached to preparing them to function effectively in that arena.

Concord students are almost immediately introduced to conducting digital research using the Internet. For example, as soon as they are registered for their first year and have completed their Legal Writing module in "using the Law Library," they receive complete access to Westlaw and its databases of cases, statutes, news and other research information.⁹⁷ In addition to receiving a password, Concord students have full access to Westlaw's 24 hour telephone and email support. They also are supplied information on telephone training from Westlaw, a feature offered only to Concord students because of the vast geographical distances from each other.

In January 2000 Concord added another program to its student database, VersusLaw. While this database cannot be compared in terms of scope to Westlaw or Lexis-Nexis, in actual practice it is far less expensive than those programs. VersusLaw contains a fully searchable data warehouse of federal and recent state appellate decisions.⁹⁸

Concord's Internet library staff help students find case law and other materials on-line, including how to effectively use Westlaw, VersusLaw, and Internet databases such as FindLaw.⁹⁹ They also conduct an orientation program to ensure that students' computers are equipped with the right software for on-line video lec-

96. Harmon, *supra* note 94, at 13.

97. <http://www.westlaw.com/> (visited Oct. 2000).

98. <http://www.versuslaw.com> (last visited Oct. 2000). In a 1999 review of the site, it was observed: "This database allows full-text searching of (mostly) cases and is quickly obtaining retroactive coverage. For example, Utah Cases back to 1950 are available on VersusLaw. Many states go back even further. Federal appellate cases are also available (they are still weak on the federal district court level). You have an option to search individual states or to search all the state or federal opinions at once." http://www.versuslaw.com/Global/press_utahbarjnl.htm. (last visited Oct. 2000).

99. <http://www.findlaw.com/> (last visited Oct. 2000).

tures, chat sessions, and other technological demands.

In response to criticism that Concord's digital libraries fail to include older legal materials, Dean Goetz stresses the impact of the Internet on the practice of law and the realities of practice. "I don't think very many students need to look up a case from the 1700s. When you practice, you can't cite case law from the 1700s in front of a judge and not expect to get laughed at. That's the dichotomy between what a traditional law librarian teaches, versus practicing law."¹⁰⁰

Concord asserts that it can adequately teach law students how to effectively conduct legal research during their academic training with the use of two propriety databases and the Internet.¹⁰¹ In doing so, it has laid down a challenge to the traditional law schools to demonstrate with some certainty the continued need for the huge financial expenditures needed to construct, maintain, and improve the traditional law school law library. In the absence of technology, the reasons for requiring law school libraries to meet minimal standards are fairly obvious. There was a need to build a collection consisting of thousands of volumes of law books and treatises and employ a large support staff to help students and faculty effectively use the collection. Ten years ago, construction of a modest law library in the Midwest cost from \$7.5 million to \$10 million.¹⁰²

However, technology and the Internet have dramatically changed the legal research game while the ABA accreditation standards have yielded only slightly to this phenomenon. Concord's program asks a simple question: Can a student be taught how to effectively conduct legal research where the instructor relies only upon electronic databases? The ABA says "no," and Concord says "yes." If they remain at loggerheads, the final decision on accreditation in the digital age may have to come from less interested observers.

XII. SKILLS, EXTERNSHIPS AND CLINIC PROGRAMS

Skills courses, clinics and externships provide law students with valuable simulated and actual legal experience prior to graduation.

100. Littman, *supra* note 16.

101. "Welcome to the Concord University Law Library. Concord University's law library includes links to all research materials students will need to complete their assignments and fulfill the curriculum."

102. Estimate based on the cost of building a new, modest library for William Mitchell College of Law, which was completed in 1990.

These offerings have become an integral part of the curriculum of most traditional law schools and cannot be replicated by Concord if it adheres exclusively to its Internet format. However, Concord has the opportunity to become a superior model of educational excellence in these areas through application of its technology, adherence to its modular approach to learning, and careful administration. There are many innovative possibilities and only a few of the more obvious are mentioned here.

For example, Concord could create a two-stage training program. In stage one Concord's technology can be used to thoroughly prepare students for participation in simulated or clinic experiences at a level above that offered at many traditional law schools. The first step is to create a series of specific "bridge courses" that are taken the semester immediately prior to the skills, clinic or externship training. Students in a bridge course are assigned relevant reading assignments and in the Concord tradition, required to complete a series of modular quizzes on the material before moving to the second level of preparation. At the second level, Concord's computer can be programmed to provide simulated, interactive exercises and demonstrations, which are followed by a quiz or essay requirement.¹⁰³ In addition, students can convene weekly with their instructor in Concord's synchronous chat room where practical and ethical issues are discussed. Only upon successful completion of a bridge course is a student eligible for the final stage of training in clinics, externships or skills courses.

In stage two, Concord can fashion agreements with existing law schools to place its students in intense skills offerings during summer school or semester breaks. For example, some law schools offer week-long summer courses in trial skills,¹⁰⁴ negotiation and mediation.¹⁰⁵ These schools could cooperate with Concord to train

103. Interactive Internet exercises are a concept already pioneered by the Practising Law Institute. Practising Law Institute (PLI), *Teacher's Guide to Effective Implementation of the Interactive Courtroom*, <http://www.cle-net.edu> (last visited Oct. 2000). PLI recently released the "Interactive Courtroom," an interactive CD-ROM. The full program is a blend of video, audio and text and covers a variety of areas including direct and cross-examination, and closing arguments. The author pioneered the creation of videotaped demonstrations for the National Institute for Trial Advocacy (NITA) in the 1980s.

104. Usually modeled after the design created by the National Institute for Trial Advocacy. See generally NITA, at <http://www.nita.org> (last visited Oct. 2000).

105. William Mitchell College of Law has created a Summer Skills Institute where trial skills, negotiation, mediation, writing and business courses are offered. Hamline College of Law has created a Dispute Resolution Institute, which is held

its students in the skills area.

Concord could also develop its own summer skills training programs where students gather nationally or regionally for intense short-course skills training modeled along the lines of that offered by many law schools and Continuing Legal Education providers such as the National Institute for Trial Advocacy,¹⁰⁶ which offers 45 separate skills programs annually throughout the United States.¹⁰⁷

Still another option is for Concord to develop and administer a national/international student placement program where it takes responsibility for searching out and arranging clinic and externship opportunities for its students. Like the procedure used in many traditional law schools, it would approach law firms, judges, Public Defender, Public Prosecutor or Legal Services offices in a student's city or region and seek an opportunity to create a clinic or skills training program with them. Simultaneous coursework assignments and interaction with Concord can be accomplished by using the weekly synchronous chat room while its computer weekly monitored student progress by generating reports from data provided by the on-site student supervisor and the student.

There are many opportunities for Concord to use its innovative technology and teaching/learning philosophy to enhance skills, clinics and externship student training. Its entry into this area may well have a significant impact on how existing externships, clinics and skills courses are taught.

XIII. WILL CONCORD IMPACT STUDENT TUITION AND DEBT?

It may be a stretch to suggest that Concord can impact legal education's cavalier attitude toward the decade-long unchecked tuition increases and its "head in the sand" reaction to the huge loan debt carried by many students upon graduation. Much will turn on whether Concord and its progeny can generate sufficient consumer interest in on-line legal education, the position the ABA takes toward its accreditation, and Concord's desire to seek a sufficient market share so that traditional law schools must become somewhat competitive.¹⁰⁸

in the summer. <http://www.hamline.edu/law/adr/>. Both colleges offer short courses in January before spring classes begin.

106. <http://www.nita.org> (last visited Oct. 2000).

107. *Id.*

108. Currently, Concord seeks only students who without it could not obtain a legal education. It makes no pretense of competing with traditional law schools.

Concord's modest annual tuition of \$4,800¹⁰⁹ for its four-year degree stands in stark contrast to that charged by many private law schools.¹¹⁰ In 1995 average private law school tuition was estimated at \$16,798 and the average public law school tuition was estimated at \$5,530 for residents and \$11,683 for non-residents.¹¹¹ The annual cost of books and supplies five years ago was about \$830.¹¹² The total annual actual cost of attending law school escalates when one adds an estimated \$12,054 in off-campus living expenses¹¹³ and annual lost income from employment.¹¹⁴

There is little support for the proposition that the nation's law schools have attempted to limit tuition increases to match inflation or have made serious efforts to operate them very efficiently. To critics, it appears they have gone in the opposite direction.

Professor Christopher T. Cunniffe writes that over the past twenty years, tuition increases at both public and private law schools have far outpaced the rate of inflation.¹¹⁵ He reports that from 1974 to 1994, the consumer price index rose 201%.¹¹⁶ During the same period average tuition at private law schools rose 586% (from \$2,305 to \$15,835), while average tuition at public law schools rose 601% (from \$716 to \$5,016) for resident students and 544% (from \$1,655 to \$10,667) for non-resident students. Between 1974 and 1993, average private law school tuition expressed as a

109. Tuition will increase to \$215 per unit in September 2001, making yearly tuition \$5,160. Concord students are not eligible to participate in the federal student loan program. However, in August 2000 the Department of Education announced plans to discuss possible changes to financial-aid regulations covering distance-learning courses in response to complaints that the regulations inhibit the growth of distance education. Chronicle of Higher Education, <http://chronicle.com/distance> (last visited Aug. 30, 2000).

110. The Concord program requires four years of study and at least one trip to California to sit for the first year bar examination if one intends to practice.

111. Memorandum QS9596-46 from the Office of the Consultant on Legal Education to the ABA to Deans of ABA-Approved Law Schools [hereinafter Memorandum QS9596-46] (May 15, 1996) (cited by Christopher T. Cunniffe, *The Case For The Alternative Third-Year Program*, 61 ALB. L. REV. 85, 99 (1997)).

112. *Id.*

113. The cost of living on campus during the year 1999-2000 is estimated by the American Bar Association at 8,647 and the cost of living at home while attending law school is estimated at 7,600. <http://www.abanet.org/legaled/statistics> (last visited Oct. 2000).

114. Cunniffe, *supra* note 111, at 87. In 1987, it was estimated that the foregone opportunity cost of attending law school for three years was between \$21,000 and \$35,000, depending upon the amount of in-school and summer earnings.

115. *Id.* at 99.

116. *Id.* at 99-100.

percentage of median family income rose from 16.8% to 47.5%.¹¹⁷

There are critics who lay blame for the unchecked increases squarely on the shoulders of the American Bar Association and its accreditation scheme while some suggest that law school administrators are not without fault.¹¹⁸ Critics charge that were there a "free market," many law students might well choose less expensive law schools who possess fewer amenities rather than expensive law schools and significant loans.¹¹⁹

The unchecked tuition increases have been accompanied by a government loan program that permits an enormous debt to accrue by graduation. In 1995 the typical law student graduated with \$37,700 of law school related debt.¹²⁰ The 1995 figure was up from \$30,600 in 1994 and \$25,600 in 1993.¹²¹ The Law School Admissions Council reported that for the year 1999-2000 the average debt for law school graduates who borrowed both federal and privately guaranteed student loans is about \$80,000. For those who borrowed only federally guaranteed student loans, the average debt is just over \$39,000.¹²²

It appears that an increasing number of law students have gone on a borrowing binge with many starting law school carrying a heavy undergraduate debt, including maxed-out credit cards, who then add large sums to the obligation. The consequences of the huge debt upon graduation are clear. Those students, who have the option, take jobs with employers offering the highest salary, regardless of whether the job is in the area of law that interests them. Surely, some of the most talented students forego law clerking, legal-aid, public defender and public prosecutor opportunities because of the crushing burden of debt.

A huge debt may also force a student to defer the purchase of a home, marriage and child-bearing decisions. Moreover, even though the graduate may have a good salary, the debt may eat away at the graduate's paycheck, often leaving the graduate feeling poverty-stricken. In a few cases, debt may force a graduate into default or bankruptcy. It is not a pretty picture.

117. *Id.*

118. George B. Shepard & William G. Shepard, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2178 (1998).

119. *Id.*

120. Cunniffe, *supra* note 111, at 88.

121. *Id.* at 100.

122. Law School Admissions Council, <http://www.last.org/financial-aidrepayment.asp> (Aug. 30, 2000) (last visited Oct. 2000).

Law schools have priced themselves out of the market for many of America's citizens and have effectively prevented competition to adjust for this factor. Furthermore, little has been done for Americans demanding greater flexibility in their educational opportunities. Technology and the Concord model offer that alternative. As Concord gains greater visibility, the disparity in tuition between it and the traditional law school will inevitably raise questions about the "real value" of attending a traditional law school. Will these law schools be able to persuade qualified students that the value of attending their institutions is worth the extra annual thousands dollars, especially if the traditional law schools cannot produce persuasive evidence supporting their claims?

XIV. ABA ACCREDITATION

The answer to the question of whether Internet law schools like Concord will be accredited by the ABA is important to traditional law schools, the legal profession, and the American public. For more than a century¹²³ the ABA has worked to ensure that the legal profession and law schools meet certain standards designed, at least in part, to protect the American public from untrained and unscrupulous lawyers.¹²⁴ Most of the law school standards, however, were developed long before the advent of the technological revolution that is engulfing academia.

The impact of technology and its potential for wide-spread use in distance learning law school courses prompted the ABA to published Temporary Distance Learning Guidelines in May 1997.¹²⁵ Al-

123. The American Bar Association was founded in 1878.

124. Roy T. Stuckey, *Education For The Practice Of Law: The Times They Are A-Changing*, 75 NEB. L. REV 648, 651-52 (1996) (providing a short history of the ABA).

125. *Memorandum D9697-59* (May 6, 1997)

TO: Deans of ABA Approved Law Schools
FROM: James P. White, Consultant on Legal Education to the American Bar Association
SUBJECT: Distance Education
DATE: May 6, 1997

At the Accreditation Committee meeting held on April 25-26, 1997, the Committee approved the attached Temporary Distance Education Guidelines. The desire of the Committee was to deal with the issue of distance education in a prompt manner and to obtain information to guide the development of permanent standards and interpretations for this area of education. In addition, the Guidelines remove the necessity of obtaining a waiver or approval from the Accreditation Committee for courses of the sort that are described in the Guidelines, although it may be necessary to obtain prior approval from the Consultant's Of-

fice.

With regard to courses described in sections 1, 2 or 4 it is not necessary to obtain prior approval from the Accreditation Committee or the Consultant's Office. However, it is expected that each course will be conducted in such a fashion as to comply with the principles of the Guidelines, including sections 5 and 6.

With regard to experimental courses described in section 3, prior approval is necessary. While it will not be necessary to obtain a waiver or approval from the Accreditation Committee, it will be necessary to obtain prior approval from the Consultant's Office in accordance with these Guidelines. As part of the authorization for the experiment, the school will be expected to report on the course's successes and difficulties, including the reasons therefor. This information will be used by the Technology Committee, the Standards Review Committee and the Accreditation Committee to suggest permanent standards and interpretations. If a school should have, or desire to establish, a course which is not described in these Guidelines, it will continue to be necessary for the school to obtain a waiver or approval of the course from the Accreditation Committee.

PRINCIPLES FOR DISTANCE EDUCATION. Educating a student for a Juris Doctor degree is professional education of a most distinct variety. It involves more than the mere delivery of information or simply learning facts, history or even logic. During a law school education a student is expected to participate in a learning community whereby he or she will ultimately learn, experience, and develop skills and knowledge that will advance the legal system, society and his or her career. This law school experience involves interaction with faculty not only in the classroom, but also in other places and at other times. Students also learn from each other by inquiry and challenge, review and study groups. In sum, law school is an educational process in which a student matures with the law and his or her ability to use and develop it.

As new methods of education develop, legal educators must be aware and ready to implement them in order to provide the best possible legal education to the greatest viable student body. In the last few years various methods of distance education have become available and, certainly, more will present themselves in the future. As legal educators we must consider which of these new methodologies provide appropriate legal education tools.

In a desire to gather information on distance learning for ultimate incorporation into the Standards, the Accreditation Committee of the Section on Legal Education and Admissions to the Bar has directed the Consultant's Office to consult with the law schools on the use of distance education in legal education. In addition it has authorized the Consultant to give permission to law schools to conduct experiments in legal education by the use of such methodologies, while keeping in mind the direction of Standard 304(g) that approved law schools may not grant credit for courses taken by correspondence study.

In the spirit of experimentation the Consultant's Office has developed the following guidelines and invites law schools to propose distance learning educational experiments. Such experiments may be authorized by the Consultant's Office only for an experimental period. The results of those experiments will be reported to a Committee on Technology which was recently appointed by the Chair of the Section. Ultimately that Committee will develop guidelines for the use of distance educational technology which will be submitted to the Standards Review Committee. The Standards Review Committee will consider the proposals and submit them for public debate and comment, and ultimately for adoption.

CONSULTANT'S TEMPORARY DISTANCE EDUCATION GUIDELINES

1. Site of reception—Experiments in which educational programs will be dissemi-

though they encourage innovation, they are relatively conservative

nated from one law school and received at another law school will generally comply with the principles of legal education as stated above. Also, if the locale at which the legal educational program is received has a law faculty of significant size, a student body of significant size and a library or information resource center of significant size, the program will generally comply with these principles of legal education. Thus, courses received at a law school facility from non-law school sites or other educational institutions will generally comply with these principles. It is not necessarily true that a faculty member must be present in the classroom or other reception facility.

On the other hand delivery of course work to a person's home or office would generally not be in compliance with these principles. Similarly, delivery to a site which merely has technical personnel to operate and maintain educational or transmission equipment, but does not have a law faculty, is not in compliance with the above principles. Delivery to a secondary site at which a faculty, students and a library or information resource center are to be located may require approval in accordance with the Standard 105 and Interpretation 105-1(11) regarding the establishment of a branch campus. Also, because of the special developmental and interactive nature of first year courses, use of distance education for such course work will not usually be approved at the present time under these guidelines

2. Externships and clinical programs—The use of distance education may be particularly useful as a means of enhancing externships or clinical programs. Such externships and clinical programs may, for example, have classroom components which are difficult to deliver on campus at the law school site. The use of distance education technology in such cases may be designed to enhance a law student's education and provide greater efficiency. Thus, for example, externships which are physically located at some distance from the law school campus might employ distance delivery systems for the conduct of in-class sessions in a uniform and convenient fashion.

3. Limited exceptions—In the spirit of experimentation a limited exception may be granted for a course which is not in strict compliance with the requirements stated herein for faculty size, student size and/or a library or information resource facility. Such an exception will be granted on an ad hoc basis upon a showing of specific educational benefits to be provided by such a course while maintaining a minimum of the potential shortcomings noted in this document. However, a student may take only one such course (three credit hours) for the purpose of being applied toward the class hour and residence requirements of the Standards.

4. Level of program—Consideration will be given to the program for which the distance education is being offered. Thus, post J.D. programs such as LL.M. and S.J.D. programs may be considered differently from regular J.D. programs, since the maturation and educational process involved in a J.D. program have already occurred for the student.

5. Interactivity—As stated above, interaction between student and faculty is a crucial element to legal education. Thus, such interaction will be required.

6. Technology requirements—Technology of poor quality can be a serious hindrance to the delivery of a good educational program. All systems will be expected to operate in a manner which will enhance and not hinder education. To that end the law school will be expected, in its request for authorization to conduct an experiment, to describe the technology to be used, the type of facility from which the program will be delivered and the type of facility to which it will be delivered, the bandwidth and other technical information of any video delivery system, the nature of any computerized delivery system, and other related information.

in scope. For example, they prohibit any significant substitution of traditional legal education practices with distance learning technology, at least for the J.D. degree.¹²⁶ The temporary guidelines bar delivery of distance legal education to a person's home or office¹²⁷ and strongly discourage its use in first-year courses.¹²⁸ While the Guidelines contain limited exceptions, students are restricted to receiving no more than three credits in the distance learning setting.¹²⁹ Moreover, "only high quality" technology may be used.¹³⁰

Currently, there is no law school in the nation that provides a Juris Doctor degree completely over the Internet that has ABA approval. Furthermore, when the ABA labeled Concord's program as "correspondence study," it eliminated it from accreditation consideration because ABA Accreditation Standard 304(f) specifically states that "a law school shall not grant credit for study by correspondence."¹³¹

Accreditation is very important to a law school like Concord. Without it, graduates who complete its J.D. course of study are limited to initially applying to the California bar if they intend to practice.¹³² Nonaccreditation also carries a stigma of being second

126. Helen Leskovac, *Distance Learning In Legal Education: Implications of Frame Relay Videoconferencing*, 8 ALB. L.J. SCI. & TECH. 305, 324-25 (1998).

127. *Id.* at 325.

128. *Id.*

129. *Id.*

130. *Id.* at n. 102.

131. <http://www.abanet.org/legaled/distanceeducation/distance.html>.

132. Concord University School of Law is registered with the Committee of Bar Examiners of the State Bar of California. This registration coupled with the State of California's Bureau for Private Postsecondary and Vocational Education approval of the outstanding curriculum of Concord allows graduates of Concord's Juris Doctor (JD) program to become eligible to sit for the California Bar Examination. Upon passing the California Bar Examination, Concord alumni may apply for admission before many of the Federal courts. In addition, Concord alumni who pass the California bar examination may become eligible to sit for the bar examination in other states. Some states require practicing in California for several years or earning a Masters of Law (LLM) degree before a Concord graduate is allowed to sit for their examination. In addition to these possibilities Concord graduates may also seek to qualify as a specialist permitted to practice before certain United States administrative agencies. The following agencies may permit Concord graduates to practice before them either on motion, or completion of a proficiency exam: United States Tax Court, United Patent and Trademark Office, United States Immigration and Naturalization Service, United States Department of Energy, Federal Communications Commission, Federal Trade Commission, Federal Aviation Administration, Federal Maritime Commission, Interstate Commerce Commission, Occupational Safety and Health Board, Social Security Administration, National Labor Relations Board, American Arbitration Association

class.

The ABA's accreditation process has been severely criticized by scholars including Professors George B. Shepherd and William G. Shepherd.¹³³ In their article¹³⁴ they provide an analysis that details the power the ABA exercises over the academy through the accreditation process. The following excerpts capture the essence of their views.

The ABA's accreditation system is another important and unremedied case of cooperation and collusion. [T]he....ABA has exerted monopoly power not only over the market for legal training, but also over three related markets: the market for the hiring of law faculty, the market for legal services, and each university's internal market for funding. The ABA's accreditation system has placed the markets for law faculty, legal training, and legal services under unified control and rules. The ABA has arranged government support for its role, with the effect of designating ABA- approved law schools as the only route for entering most areas of the practice of law in the United States....¹³⁵

Both existing accredited law schools and existing lawyers support the system's controls. The law schools themselves support the faculty's control of the accreditation system for two reasons. First, although the system raises law schools' costs, the system benefits law schools by precluding competition from new law schools. Because the system limits entry of new schools into the legal training market, schools can pass the increased costs from the system on to students; a school need not fear that the higher costs from the system will place the school at a competitive disadvantage.¹³⁶

...economic analysis indicates that a standard and skillful cartel is in place, involving collusion, secrecy, and an adroit use of penalties and rewards. As with other cartels,

Workers Compensation Board.

133. George B. Shepherd is Assistant Professor of Law, Emory University School of Law; B.A., Yale University; J.D., Harvard Law School; Ph.D. (Economics), Stanford University (expected 1998). William G. Shepherd is Professor of Economics, Department of Economics, University of Massachusetts at Amherst, and General Editor of the Review of Industrial Organization; B.A., Amherst College; Ph.D., Yale University.

134. Shepard, *supra* note 118, at 2091.

135. *Id.* at 2095.

136. *Id.*

the system seems to create few benefits, but causes inefficiency and unfairness.¹³⁷

Without the accreditation system, the variety of law schools and level of innovation would be greater. Entrepreneurial law schools would experiment and innovate to develop programs that would provide the most appealing combination of instruction, apprenticeship, and price to each part of the market for legal training. Some schools would continue to provide the expensive Harvard-model education. Other institutions would transform themselves to become the equivalent of trade schools, with cheap, short courses of study. Large law firms might themselves offer parts or all of such programs.¹³⁸

In the typical ABA school, no entrepreneur manages the school and reaps the profits. No entrepreneur attempts to whittle down high compensation for faculty. Instead, the faculty control conditions in the law school, including their own compensation and perquisites."¹³⁹ ...The ABA accreditation standards...benefit law schools' faculty, while they harm the law students and other university programs that must pay for the benefits.¹⁴⁰

Critics have also suggested that faculty self-interests are another significant impediment to change.¹⁴¹ For example, faculty may be reluctant to invest the time and energy necessary to incorporate and use technology in teaching. Their reluctance will generate opposition to reforms that require they change the way classes have been taught for decades. They may also be reluctant to institutionalize extended classroom or classroom-free teaching methods if the conversion from the traditional teaching method threatens to significantly reduce the number of available faculty positions."¹⁴²

Critics of the present system agree that significant reform of teaching methods by the legal academy and ABA accreditation of Internet driven law schools is unlikely unless the current system undergoes dramatic change, which it currently seems unwilling to

137. *Id.* at 2095-96.

138. *Id.* at 2098.

139. *Id.* at 2111.

140. *Id.* at 2135.

141. Stephen M. Johnson, *www.Lawschool.Edu: Legal Education in the Digital Age*, 2000 WIS. L. REV. 85, 117 (2000).

142. *Id.*

consider. Maybe so, however, as Concord continues with its innovative teaching over the Internet, and steadfastly maintains its goal of providing a good legal education to its student body who, without Concord, could not attain a law degree, the challenge to the ABA and the academy to rethink and modify their assessment of this model of legal education remains real and alive. Although the ABA faces a difficult and possibly tumultuous task, American society would be best served if it developed accreditation standards for law schools in the Concord model while modifying existing standards for traditional law schools, with the goal of more accurately reflecting the impact that technology had made on the legal education enterprise. Certainly, it will benefit all if the ABA and Concord engage in a cooperative examination of Concord's model of legal education.¹⁴³ While the Concord model may not be perfect, the question is whether it sufficiently trains students in law so that upon graduation they can apply to sit for a bar examination in any state and upon satisfactory completion, function as competent lawyers?¹⁴⁴

XV. CONCLUSION

A decade ago, an institution like Concord would have been considered as nothing more than science fiction. Few could have imagined assembling some of the nation's leading scholars and through the use of technology and testing, deliver legal education courses over the Internet to the homes of students, who, for a variety of reasons, could not attend a traditional law school.

In an unprecedented effort, a for-profit Internet law school had developed a curriculum using distance learning tools that corresponds to that used in most leading law schools.¹⁴⁵ Technology provides course content plus access to professors and fellow stu-

143. Concord Dean Jack Goetz has openly shared the complete Concord model with the academy at numerous meetings and conferences.

144. California and the federal government have already recognized that Concord meets this standard.

145. Its Juris Doctor Program, for example, is 96-semester units, covering four years, with each year consisting of no less than 48, or more than 52 consecutive weeks of study. Its Executive JD program is a 72-semester unit program of approximately three years in duration, however, JD students do not sit for the bar exam and are not subject to any mandatory time requirements. An Executive JD with Health Care Emphasis is a 72-semester unit program including Health Care Law and at least 8 units from several elective course options including: Health Care Organization and Finance, Bioethics, Health Care Regulation, Risk Management, Products Liability, and Professional Negligence in Health Care.

dents via instructor-led chat rooms and student asynchronous chat rooms. All of this is accomplished at a modest annual tuition of around \$5,000.

Although the Concord model stands alone in the legal academy, dozens of other American educational institutions have well established virtual degree programs. For example, the Western Governors University, created by the Western Governors Association,¹⁴⁶ provides students with the opportunity to take distance education courses and receive degrees from a host of participating universities.¹⁴⁷ At the University of Phoenix, over 6,000 students take on-line courses.¹⁴⁸ The State University of New York (SUNY) has created a Learning Network (SLN), which is an on-line instructional program created for the 64 colleges and nearly 400,000 students of the SUNY. SUNY reports the annual growth in on-line courses as going from eight in 1995-96 to 1000 in 1999-2000, and annual growth in enrollment as going from 119 in 1995-1996 to over 10,000 in 1999-2000.¹⁴⁹ Regents College is America's First Virtual University¹⁵⁰ and offers a student the opportunity to obtain an undergraduate education at his own pace from his home.

European universities have offered a variety of distance programs for a number of years, although law is considered an undergraduate course of study. The Open University, which is Britain's largest distance learning university, claims to have more than 200,000 people studying its courses.¹⁵¹

With the furor of activity generated by the technological revolution occurring at every level of education around the world, the legal academy will find it increasingly difficult to stand virtually alone in opposition to its use. As for Concord, it will continue to

146. <http://www.wgu.edu/> (last visited Oct. 2000).

147. The University offers courses and degree programs from over 45 universities and independent educational providers. <http://www.wgu.edu/wgu/academics/index.html> (last visited Oct. 2000).

148. <http://on-line.uophx.edu/> (last visited Oct. 2000); see also Warren Ashley, "Cyber Universities": *The Wave of the Future*, 19 L.A. BUS. J. 32 (1997). The university, named one of the top 20 cyber universities in the United States in a 1997 Forbes magazine article, broadcast the courses through cable television, satellite television, public television, and the Internet. Johnson, *supra* note 141, at 91 n. 45.

149. <http://www.aln.org/alnweb/journal/jaln-vol4issue2.htm#> Student Satisfaction and Perceived Learning with On-line Courses: Principles and Examples from the SUNY Learning Network.

150. <http://www.petersons.com/regents/main.html> (last visited Oct. 2000).

151. <http://www.open.ac.uk/factsheets/Background.pdf> (last visited Oct. 2000).

find the path to obtaining accreditation from the ABA or receiving the respect it is due from traditional institutions a difficult one. Few are ready to recognize that it is the most innovative model for the delivery of legal education created in the last 130 years. It has gone where no other public or private law school dared to go.

Despite the unfortunate wide-spread reluctance to recognize the value of a working model of an Internet law school, Concord's existence has already significantly impacted the academy. There is no doubt that legal institutions will eventually, and in ways probably not always apparent, adopt much of Concord's technology and apply it in some form to traditional law school teaching. One can hope that somewhere, in the not too distance future, Concord will be recognized as a major force that caused traditional law school teaching methods and offerings to be changed to reflect the digital age. Finally, one can hope that Concord will continue to provide hard working men and women in American with the opportunity of obtaining a good legal education at a modest cost, who, without it, would not have received this opportunity.
